

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JEWISH FEDERATION OF METROPOLITAN
CHICAGO,

Plaintiff,

v.

BAYOU MANAGEMENT, LLC, SAMUEL ISRAEL, III,
DANIEL MARINO, BAYOU GROUP, LLC, BAYOU
SECURITIES, LLC, BAYOU ADVISORS, LLC, BAYOU
EQUITIES, LLC, BAYOU FUND, LLC, BAYOU SUPER
FUND, LLC, BAYOU NO LEVERAGE FUND, LLC,
BAYOU AFFILIATES FUND, LLC, BAYOU
ACCREDITED FUND, LLC, BAYOU OFFSHORE
FUND, LLC, BAYOU OFFSHORE FUND A, LTD,
BAYOU OFFSHORE FUND B, LTD, BAYOU
OFFSHORE FUND C, LTD, BAYOU OFFSHORE FUND
D, LTD, BAYOU OFFSHORE FUND E, LTD, BAYOU
OFFSHORE FUND F, LTD BAYOU OFFSHORE
MASTER FUND, LTD, and DOES 1-25, Inclusive,

Defendants.

Civil Action No. 3:05CV01401 (SRU)

November 2, 2005

MOTION FOR DEFAULT JUDGMENT AGAINST DANIEL MARINO

Pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, Plaintiff, the Jewish Federation of Metropolitan Chicago (the "Federation"), respectfully requests that the Court enter a default judgment against Defendant, Daniel Marino ("Marino") for failure to appear, answer, plead or otherwise defend this action, and to assess damages against Defendant Marino in the amount of four million dollars (\$4,000,000). In support of this motion, the Federation submits the attached Affidavit of Kent D.B. Sinclair ("Sinclair Affidavit") (attached as Exhibit 1) and further states as follows:

A. The Motion For Default Judgment Should Be Granted Because Daniel Marino Failed To Answer Or Otherwise Respond To The Complaint.

1. On September 2, 2005, the Federation filed the Complaint in the above-captioned matter. *See* Complaint (Docket No. 1).

2. Defendant Marino is an individual who resides at 261 Bayberry Lane, Westport, Connecticut. Complaint ¶ 16.

3. On September 9, 2005, Defendant Marino was served with the Summons and Complaint at his residence. A copy of the affidavit of service was attached as Exhibit A to the Federation's Application for Entry of Default as to Daniel Marino (Docket No. 55).

4. Defendant Marino's legal counsel, Andrew B. Bowman, Esq., appeared at the hearing on the Federation's Motion for Preliminary Injunction on September 16, 2005. Defendant Marino and his counsel, Mr. Bowman, also attended Marino's deposition in this matter on September 23, 2005. Sinclair Affidavit ¶¶ 4-5.

5. The time within which Mr. Marino was to serve a responsive pleading or otherwise defend as required by Rule 12(a) of the Federal Rules of Civil Procedure has expired.

6. On September 30, 2005, the Federation submitted an Application for Entry of Default as to Mr. Marino (Docket No. 55), which was granted and docketed by the Court on October 4, 2005 (Docket No. 57).

7. To date, no response of any type has been filed or served by Mr. Marino in this case. Sinclair Affidavit ¶ 7.

8. As set forth more fully in the Sinclair Affidavit, the Federation believes that Mr. Marino is not in the military service of the United States of America or its allies. Sinclair Affidavit ¶ 10.

B. Assessment Of Damages.

9. As set forth more fully in the Complaint (Docket No. 1), in March 2004, the Federation invested two million dollars (\$2,000,000) in one of the funds within the Bayou Group hedge fund company, specifically the Bayou Offshore Fund B, Ltd. The Federation invested an additional two million dollars (\$2,000,000) in the same fund in July 2004, for a total investment

in the Bayou Group of four million dollars (\$4,000,000). Complaint ¶¶ 44, 46-47; Sinclair Affidavit ¶ 11.

10. Defendant Marino and the other defendants in this case have misappropriated the Federation's \$4,000,000 investment. Complaint ¶ 1. In fact, in connection with his misappropriation of funds from the Federation and other investors in the Bayou group of funds, on September 29, 2005, Defendant Marino pleaded guilty to federal criminal charges of: (1) conspiracy to commit fraud; (2) investment adviser fraud; (3) mail fraud; and (4) wire fraud. *See* Sinclair Affidavit ¶¶ 8-9.

11. In its Complaint, the Federation asserts several causes of action against Marino and the other defendants, including a count for civil conspiracy (Count VIII). That Count includes the assertions that Marino and the other defendants "combined and acted in concert with a common purpose to defraud [the Federation] . . . and to unlawfully convert and misappropriate monies belonging to Plaintiff." Complaint ¶ 112.

12. Under Connecticut law, Defendant Marino is jointly and severally liable for the damages resulting from such a civil conspiracy. *See, e.g., Desrosiers v. American Cyanamid Co.*, 1966 U.S. Dist. LEXIS 7184m *70*8 (D. Conn. 1966) (discussing effect of addition of civil conspiracy claim as changing the individual liability of the defendant into joint and several liability against both the defendant and the other alleged participants); *Noll v. Hartford Roman Catholic Diocesan Corp.*, 2005 Conn. Super. LEXIS 2093, 8 n.13 (Conn. Super. Ct. July 29, 2005) ("whatever was done in pursuance of the conspiracy by one of the conspirators is considered as the act of all conspirators; all are equally liable therefore as joint tortfeasors . . .") (citation omitted); *Governors Grove Condominium Assoc. v. Hill Dev. Corp.*, 36 Conn. Supp. 144, 151, 156 (1980) ("all conspirators are civilly liable for the damage resulting from any overt act committed by one of them pursuant to the combination. [...] [P]ersons who knowingly join a

fiduciary in an enterprise which constitutes a breach of his fiduciary duty of trust are jointly and severally liable for any injury which results.”) (citations omitted).

13. The Federation was damaged in the amount of at least four million dollars (\$4,000,000).

WHEREFORE, Plaintiff, the Federation, through its attorneys, respectfully requests that the Court enter a default judgment against Defendant Marino, order that Defendant Marino is jointly and severally liable for the Federation’s loss, and award damages in the amount of four million dollars (\$4,000,000).

Respectfully submitted,

Jewish Federation of Metropolitan Chicago
By its attorneys,

/s/ Kent D.B. Sinclair

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the forgoing document this 2nd day of November 2005, by first-class mail, postage prepaid, to all persons identified on attached service list.

/s/ Kent D.B. Sinclair

Kent D.B. Sinclair

Service List

Bayou Management, LLC:

Bayou Management, LLC
40 Signal Road
Stamford, CT 06902

Bayou Management, LLC
c/o Faust Rabbach & Oppenheim
488 Madison Avenue
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Bayou Management, LLC
c/o Samuel Israel, III
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Daniel Marino:

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Bayou Group, LLC:

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Service List (cont.)

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Service List (cont.)

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